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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,241	01/14/2002	Matthias Bratz	42044 Cont.	1890

26474 - 7590 - 04/18/2003

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EXAMINER

QAZI, SABIHA NAIM

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,241

Applicant(s)

BRATZ ET AL.

Examiner

Sabiha Naim Qazi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

FINAL ACTION

Presently claimed invention is drawn to a solid mixture of a sulfonylurea and an alkylpolyglycoside, their process for preparing formulations and method of controlling undesirable plant growth.

Acknowledgement is made of the response and request for reconsideration filed in paper no. 8. Claims 10-18 are pending. No claim is allowed.

Response filed is considered incomplete because it is silent about double patenting rejection. Applicants should submit an argument pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. Data in Table 3 and response regarding the data of the specification was fully considered but still it is not clear why the amount of active compound is different in each case. The data of examples 4, 15 and 16 are considered however, attention is drawn to the statement in response that "7.3% is the level of active compound", it does not ^{show} the % after 14 days storage. Again it is unclear what is accomplished by the data in Table 3. This is not considered a side-by-side comparison. See 716.02(e).

1. Claims 10-18 stand rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-9 of prior U.S. Patent No. 6,482,772. This is a double patenting rejection. Presently claimed invention is drawn to a solid mixture of

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sulfonylurea and an alkylpolyglycoside, their preparation and method of use for controlling undesirable plant growth, same invention is claimed in US '772.

2. Claims 10-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over De Beer et al. (CA 114:57538, abstract of ZA 8,903,661) in view of Garst et al. (WO 95/28410). Beer et al. teaches enhancement of the herbicidal activity of sulfonylurea by surfactant. Addition of Atplus 411F enhances the herbicidal activity of the sulfonylurea by an average of 51% in certain weeds.

3. Instant claims differ from the reference in claiming specifically poly alkylglucosides as a component whereas prior art teach the use of surfactant blends including poly alkylglucosides for enhancing the activity. See the abstract.

4. Garst et al. alleviates the deficiency of Beer et al. because it teaches a solid composition containing biologically active materials and a solid phase dry surfactant. The solid phase surfactant is comprised of a combination of an alkyl polyglycoside. The biologically active material includes an insecticide, fungicide, herbicide, a plant growth regulators and the like.

Furthermore, the reference also teaches the method of treating an agricultural substrate. See the entire document especially lines 28-37 on page 2; lines 1-14, page 3; lines 21-37, page 3; see formula I, R1O (Z) a for poly.alkylglycoside in line 35, page 3. These references are combinable because they are from same field of endeavor. It would have been obvious to one skilled in the art

to combine the teachings of prior art *supra* to obtain the additional beneficial solid composition useful for the enhancement of herbicidal activity of sulfonylurea as instantly claimed.

The instant invention would have been obvious to one skilled in the art at the time of invention to prepare a solid composition of mixtures of sulfonylurea and alkylpolyglucoside. There has been ample motivation provided by the prior arts to prepare the instant compositions. Polyalkylglucosides are well known for the enhancement of the activity of sulfonylurea which is a herbicide, therefore it would have been obvious to prepare the composition containing mainly these two ingredients for the same use.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Naim Qazi whose telephone number is 703-305-3910. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.


SABHA QAZI, PH.D
PRIMARY EXAMINER
April 16, 2003